



## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 337-TA-1291]**

### **Certain Replacement Automotive Lamps; Notice of Commission Determination to Review a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submission on Remedy, the Public Interest, and Bonding; Extension of the Target Date**

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (“Final ID”) issued by the presiding administrative law judge (“ALJ”) finding a violation of section 337 of the Tariff Act of 1930. The Commission requests briefing from the parties on the issues under review and from the parties, interested government agencies, and interested persons on remedy, the public interest, and bonding based on the schedule set forth below. The Commission has also determined to extend the target date for the completion of the above-captioned investigation to September 26, 2023.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On January 24, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed on behalf of complainants Kia Corporation of Seoul, Korea and Kia America, Inc. of Irvine, California (collectively, “Kia”). 87 Fed. Reg. 3584-85 (Jan. 24, 2022). The complaint, as supplemented and amended, alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale after importation within the United States after importation of certain replacement automotive lamps by reason of infringement of U.S. Design Patent Nos. D592,773; D635,701; D636,506; D650,931; D695,933; D705,963; D709,218; D714,975; D714,976; D720,871; D749,757; D749,762; D749,764; D774,222; D774,223; D776,311; D781,471; D785,833; D785,836; and D792,989. *Id.* at 3584. The notice of investigation names as respondents TYC Brother Industrial Co., Ltd. of Tainan, Taiwan; Genera Corporation (dba TYC Genera) of Brea, California; LKQ Corporation of Chicago, Illinois; and Keystone Automotive Industries, Inc. of Exeter, Pennsylvania (together, “Respondents”). The Office of Unfair Import Investigations is not participating in this investigation.

On February 7, 2022, the Chief ALJ (“CALJ”) ordered an evidentiary hearing for both Inv. Nos. 337-TA-1291 and 337-TA-1292 on the economic prong pursuant to the Commission’s pilot program for interim initial determinations (“IID”). Order No. 6 (Feb. 7, 2022). The combined evidentiary hearing was held on April 20, 2022. On July 1, 2022, the CALJ issued an IID finding that Kia has satisfied the economic prong of the domestic industry requirement with respect to all of the asserted design patents. On August 24, 2022, the Commission determined to review the IID. The investigation was reassigned to the presiding ALJ on July 6, 2022.

On January 24, 2023, the ALJ issued the Final ID finding a violation of section 337 by Respondents with respect to ’773, ’701, ’506, ’931, ’933, ’218, ’975, ’976, ’871,

'762, '764, '222, '223, '311, '833, '836, and '989 patents. Final ID at 1. The Final ID finds no violation with respect to the '963, '757, and '471 patents based on noninfringement and failure to satisfy the technical prong of the domestic industry requirement. *Id.* at 1, 284-86. The Final ID also finds that no asserted patent is invalid as anticipated or obvious. *Id.* Concerning the economic prong of the domestic industry requirement, the Final ID reduced Kia's alleged investments due to Kia's failure to establish that certain of its alleged domestic industry products are representative of other alleged domestic industry products. *Id.* at 33-37.

On February 6, 2023, Respondents filed a petition for review challenging the Final ID's findings on the economic prong of the domestic industry requirement, infringement, and validity. Also on February 6, 2023, Kia filed a petition for review challenging the Final ID's findings of noninfringement and contingently petitioning regarding the Final ID's findings concerning non-satisfaction of the technical prong of the domestic industry requirement regarding the '963, '757, and '471 patents. On February 14, 2023, Kia and Respondents filed responses to each other's petitions.

Having examined the record of this investigation, including the ALJ's Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in its entirety. The Commission has also determined to extend the target date for the completion of the investigation until September 26, 2023.

In connection with its review, the Commission requests briefing on the following issues. The parties are requested to brief their positions with reference to the applicable law, the existing evidentiary record, and the parties' submissions during the investigation.

1. Please identify, with citations to the record prior to the Final ID, where Kia satisfied its burden of proof to establish infringement of each asserted patent by applying the ordinary observer test. As a part of your discussion, please discuss:

- a. the impact, if any, of the Final ID's determination not to rely upon the testimony of Kia's expert in the Final ID's infringement analysis because such testimony is conclusory. Final ID at 33.
  - b. what evidence and argument beyond side-by-side images of the patented designs and accused products, if anything, is needed to satisfy the burden of proof, and whether Kia provided that proof, in this investigation. For example, was Kia required to provide a written explanation in its prehearing and/or post hearing briefs discussing how the accused products and each asserted patent are "substantially the same" from the perspective of the ordinary observer?
2. Please identify, with citation to the record prior to the Final ID, where Kia satisfied its burden of proof to establish the technical prong of the domestic industry requirement for each asserted patent. As part of your discussion, please discuss what evidence and argument beyond side-by-side images of the patented designs and asserted domestic industry products, if anything, is needed to satisfy the burden of proof, and whether Kia provided that proof, in this investigation. For example, was Kia required to provide a written explanation in its prehearing and/or post hearing briefs discussing how the asserted domestic industry products and each asserted patent are "substantially the same" from the perspective of the ordinary observer?
3. Please discuss whether Kia satisfied its burden of proof to establish that it has satisfied the economic prong of the domestic industry requirement through significant investments in plant and equipment based on the revised patent-by-patent investments to account for the non-representative products. Please also identify, with citations to the record prior to the Final ID, where Kia satisfied

its burden of proof as to the significance of the revised investments for each patent.

4. Please address whether the Final ID, in finding infringement or satisfaction of the technical prong as to the asserted design patents despite complainants' failure to provide a written explanation regarding similarity between the accused product and asserted design from the standpoint of the ordinary observer, is consistent with relevant legal authority. Please specifically address whether the Final ID, by providing such a written explanation in the first instance, presents issues under the Administrative Procedure Act.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are

subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no position on the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**WRITTEN SUBMISSIONS:** The Commission requests that the parties to the investigation file written submissions on the issues identified in this notice. The Commission encourages parties to the investigation, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding, which issued on January 24, 2023. The Commission further requests that Kia submit proposed remedial orders, state the date when the asserted patents expire, provide the HTSUS subheadings under which the subject articles are imported, and supply a list of known importers of the subject article. The written submissions, exclusive of any exhibits, must not exceed 50 pages, and must be filed no later than close of business on **May 25, 2023**. Reply submissions must not exceed 20 pages, and must be filed no later than the close of business on **June 1, 2023**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically

on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1291) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on May 11, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 11, 2023.

**Katherine Hiner,**

*Supervisory Attorney.*

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